



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1993

Ms. Cathy Cunningham
Senior Assistant City Attorney
City of Irving
P.O. Box 152288
Irving, Texas 77015-2288

OR93-720

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 21426.

The City of Irving received an open records request for records regarding complaints against the requestor's business filed with the Fire Department and with the City of Irving. You have released most of the requested information, but seek to withhold the name and telephone number of the person who made the complaint to the Department of Public Works for the City of Irving.² You claim that this information is excepted by the informer's privilege, which is recognized under section 552.101.

¹We note that the Seventy-Third Legislature codified the Open Records Act as chapter 552 of the Government Code and repealed article 6252-17a, V.T.C.S. See Acts 1993, 73d Leg., ch. 268, §§ 1, 46. The codification of the Open Records Act in the Government Code is a nonsubstantive codification. *Id.* § 47.

²The only record that you have submitted for review is the complaint to the Department of Public Works. Therefore, we assume that you have released all the other information requested, including the identity of the individual who made the complaint to the Fire Department. We also assume that different individuals made the complaints to the Department of Public Works and to the Fire Department. If different individuals did not make the two complaints, then you must release the name and telephone number on the complaint to the Department of Public Works. See Open Records Decision No. 208 (1978) at 1 (concluding that the identity of an informer is not protected by the informer's privilege when the person complained about already knows the informer's identity).

We conclude that the informer's privilege does not permit you to withhold the name and telephone number of the complainant in this case. The Open Records Act places on the governmental body the burden of demonstrating that an exception applies to requested information. Open Records Decision No. 542 (1990) at 2. The informer's privilege protects the identity of persons who report violations of the law. When information does not describe conduct that violates the law, then the informer's privilege does not apply. Open Records Decision No. 515 (1988) at 3. Therefore, to protect information under the informer's privilege, a governmental body must demonstrate that the information provided by the informer described a violation of the law. In this case, you have not provided any information that would permit this office to conclude that the informer provided information about a violation of the law. You have not indicated what information the informer provided to you or what laws the person informed on allegedly violated. Therefore, you may not withhold the name and telephone number of the informer.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open-records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/rho

Ref.: ID# 21426

Enclosures: Submitted documents

cc: Mr. Joe Sanders
President
Lone Star Waterproofing Co., Inc.
2217 Hinton Drive
Irving, Texas 75061
(w/o enclosures)